

FINAL

LOTTERY COMMISSION MEETING  
TUESDAY, APRIL 11, 2017 AT 4:00 P.M.  
820 NORTH FRENCH STREET  
CARVEL STATE OFFICE BUILDING  
8<sup>th</sup> FLOOR CONFERENCE ROOM  
WILMINGTON, DE 19801

HEARING MINUTES

The hearing was transcribed by a Court Reporter and the transcript will be maintained by the Lottery Commission. A quorum of the Lottery Commission was present for the hearing.

The following Commissioners were in attendance:

Gordon Andrew McKay – Chair  
Patricia Urban  
Kevin Guerke

The following Commissioners were absent:

George Luff

Appearances Noted:

Victoria Counihan – Deputy Attorney General – on behalf of the Lottery Commission  
Julie M. Donoghue – Deputy Attorney General – on behalf of the Delaware State Lottery  
Stacey Cohee – Deputy Attorney General – on behalf of the Division of Gaming Enforcement

**I. Non-Hearing Agenda Items.**

The following matters were considered and voted upon by the Lottery Commission:

**A. Matthew Zambanini – #1-17**

The Lottery Commission met to decide whether to grant Mr. Zambanini a hearing on the merits of his petition to be removed from the Delaware exclusion list per Delaware Administrative Code, Title 10 Charitable Gambling & Lottery, 200 Office of the State Lottery, 203 Video Lottery and Table Game Regulations, Regulations 7.18.6.1 to 7.18.6.3. Mr. Zambanini was present for this meeting.

The Lottery Commission voted on the following: Mr. Zambanini's request for a hearing on the merits of his petition to be removed from the Delaware exclusion list should be granted.

The Commissioners voted as follows:

Vote in favor:	Urban McKay Guerke
Opposed:	None
Abstentions:	None

Therefore, Mr. Zambanini's request for a hearing on the merits of his petition to be removed from the Delaware exclusion list has been granted. The hearing will take place immediately following this meeting. The burden of proof will be on Mr. Zambanini. He must show good cause for his removal from the Delaware exclusion list.

**B. Clarence E. Heath – #2-17**

The Lottery Commission met to decide whether to grant Mr. Heath a hearing on the merits of his petition to be removed from the Delaware exclusion list. Mr. Heath was not present for this meeting. Ms. Donoghue presented testimony and exhibits to show what notice was provided to Mr. Heath of his placement on the exclusion list and what documents Mr. Heath submitted in support of his request to be removed from the Delaware exclusion list.

- 1) The Lottery Commission first voted to determine which section of Lottery Commission statute or regulations should apply to Mr. Heath's request to be removed from the Delaware exclusion list. The Lottery Commission considered three choices:
  - a. Title 29 *Del. C.* § 4835(d) - Exclusion or ejection of certain persons from video lottery facilities and Internet lottery games. Within 30 days after service by mail or in person or 60 days after the last publication, the person named may demand a hearing before the Lottery Commission and show cause why that person's name should be taken from the list. (1<sup>st</sup> sentence)
  - b. Title 29 *Del. C.* § 4835(d) - Exclusion or ejection of certain persons from video lottery facilities and Internet lottery games. Failure to demand a hearing within the time allotted in this section precludes the person from having an administrative hearing, but in no way affects that person's right to petition for judicial review. (2<sup>nd</sup> sentence)
  - c. Delaware Administrative Code, Title 10 Charitable Gambling & Lottery, 200 Office of the State Lottery, 203 Video Lottery and Table Game Regulations, Regulation 7.18.6.4 - Any excluded person who is barred from requesting a hearing concerning his or her removal from the list by 7.18.6.1 above may petition the Lottery Commission for early consideration at any time; provided, however, that no excluded person may, within the five- (5) year period of exclusion, file more than one such petition. Such petition shall be verified, with supporting affidavits, and shall state with particularity any grounds upon which exclusion was based, and the facts and circumstances which warrant the relief sought. Upon receipt of such petition, the Lottery Commission shall request the DGE to update its previous investigation of the excluded person, including but not limited to an examination of the claims set forth in the verified petition. Upon the receipt of the results of the DGE investigation, the Lottery Commission may summarily deny the petition or may grant the petition and direct that a hearing be held. The Lottery Commission shall grant the petition only upon a finding that there exist extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the list.

After hearing the testimony and reviewing the documentary evidence submitted by the witnesses for the Delaware State Lottery, the Lottery Commission voted on the following: The Lottery Commission should apply Table Games Regulation 7.18.6.4 to determine whether to grant Mr. Heath a hearing on the merits of his request for removal from the Delaware exclusion list.

The Commissioners voted as follows:

Vote in favor of Option c:	Urban McKay
Opposed:	Guerke
Abstentions:	None

There was a majority among the Commissioners in voting that Table Games Regulation 7.18.6.4 should be used to consider whether to grant Mr. Heath a hearing on the merits of his request to be removed from the Delaware exclusion list. This would put the burden of proof on Mr. Heath.

- (2) Next, the Lottery Commission voted on the following: Mr. Heath's case meets the requirements of Table Games Regulation 7.18.6.4, so his request for a hearing on the merits of his petition to be removed from the Delaware exclusion list should be granted.

The Commissioners voted as follows:

Vote in favor of granting hearing:	Urban McKay Guerke
Opposed:	None
Abstentions:	None

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Therefore, Mr. Heath's request for a hearing on the merits of his request to be removed from the Delaware exclusion list was granted. The hearing will be noticed for May 9, 2017 at 4:00pm.

### II. Hearings.

The following hearings were held by the Lottery Commission:

#### A. Matthew Zambanini – #1-17

Mr. Zambanini presented his case in favor of his removal from the Delaware exclusion list through testimony and exhibits. Ms. Cohee presented DGE's case, in support of DGE's recommendation that Mr. Zambanini remain on the Delaware exclusion list, by presenting testimony and exhibits.

The Lottery Commission voted on the following: Has Mr. Zambanini met his burden of proof showing that he should be removed from the Delaware exclusion list under Table Game Regulations, 7.18.6.1 to 7.18.6.3?

The Commissioners voted as follows:

Vote in favor:	Urban McKay Guerke
Opposed:	None
Abstentions:	None

A Decision and Order will be drafted by the Lottery Commission.

#### B. Theresa Mary McConaghie – #3-17

Ms. McConaghie failed to appear to the hearing on her appeal of the decision by the Delaware State Lottery to deny her application for a Gaming License.

The Lottery Commission voted on the following: Shall Ms. McConaghie's appeal be dismissed due to her failure to appear to prosecute her appeal?

The Commissioners voted as follows:

Vote in favor:	Urban McKay Guerke
Opposed:	None
Abstentions:	None

A Decision and Order will be drafted by the Lottery Commission.

### III. Other Business

#### A. Approval of the Minutes of the Lottery Commission Meeting of April 12, 2016

Vote in favor:	Urban Guerke
Opposed:	None
Abstentions:	McKay

Therefore, the Minutes of the Lottery Commission Meeting of April 12, 2016 are approved and will be posted as FINAL on the Public Meeting Calendar as such.